

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ERICK M. CAMPBELL,

Plaintiff,

-against-

POLICE OFFICER MICHAEL KNAUSS,

Defendant.  
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**ORDER**

12-CV-2837 (WFK) (VMS)

**WILLIAM, F. KUNTZ, II, United States District Judge**

This action was initiated by the filing of a complaint on June 6, 2012. Dkt. 1 (“Compl.”). After a protracted litigation process, trial in this action was scheduled to commence on February 17, 2015 at 9:30 A.M. Dkt. 58. At the scheduled time of trial, Plaintiff was incarcerated. On February 4, 2015, the Court directed the Clerk of Court to issue a Writ of Habeas Corpus Ad Testificandum (the “Writ”) commanding the New York State Department of Corrections and Community Supervision (“DOCCS”) to deliver Plaintiff into the custody of the Federal Bureau of Prison’s Metropolitan Correctional Center on or before February 17, 2015 and each succeeding day thereafter, for such time as necessary, for the purpose of testifying at the trial in the above captioned matter, until the Writ was satisfied. Dkt. 72 (“Writ Order”). Among other things, the Writ ordered DOCCS to “bear its respective costs for the implementation of the terms of this Writ.” *Id.* On February 17, 2015, DOCCS filed a motion to amend the Writ to “reflect that DOCCS shall submit a bill for transportation costs to Campbell’s counsel after those services have been completed.” Dkt. 80 (“Writ Motion”). DOCCS’s motion notwithstanding,

trial began as scheduled on February 17, 2015 and Plaintiff was produced every day until the trial concluded with a verdict for the Defendant on February 19, 2015.

On February 21, 2015, Magistrate Judge Scanlon filed a Report and Recommendation recommending that DOCCS's motion be denied. Dkt 87 ("R&R") at 2. The Report and Recommendation recounted the obligations imposed by the Writ before engaging in an extensive analysis of the district court's authority to use the Writ. *Id.* at 2-8. It described how the requested amendment to the Writ is required by neither state nor federal law, and specifically noted the applicability of the concept of federal pre-emption to the question presented by DOCCS's motion. *Id.* at 8-12. Objections to the Report and Recommendation were required to be filed by March 12, 2015. *Id.* at 13; Fed. R. Civ. P. 72(b)(2). No objections were filed.


## **DISCUSSION**

In reviewing a Report and Recommendation, the court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1) (West 2015). When no objections have been filed, a district court reviews a Report and Recommendation for clear error. *See Zeitone v. Korsinsky & Klein, LLP*, 13-CV-0383, 2013 WL 5937397, at \*1 (E.D.N.Y. Nov. 4, 2013) (Kuntz, J.) (citing *Reyes v. Mantello*, 00-CV-8936, 2003 WL 76997, at \*1 (S.D.N.Y. Jan. 9, 2003) (Cote, J.)); *Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007) (Garaufis, J.).

No party has filed objections to the Magistrate Judge's Report and Recommendation in this action. The Court finds that there was no clear error in the Report and Recommendation's determination that the Writ should not be modified. The Court therefore adopts Magistrate Judge Scanlon's Report and Recommendation in its entirety.

**SO ORDERED**

s/WFK

  
HON. WILLIAM F. KUNTZ, II  
United States District Judge

Dated: March 12, 2015  
Brooklyn, New York